TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 482.

THE UNITED STATES, APPELLANT,

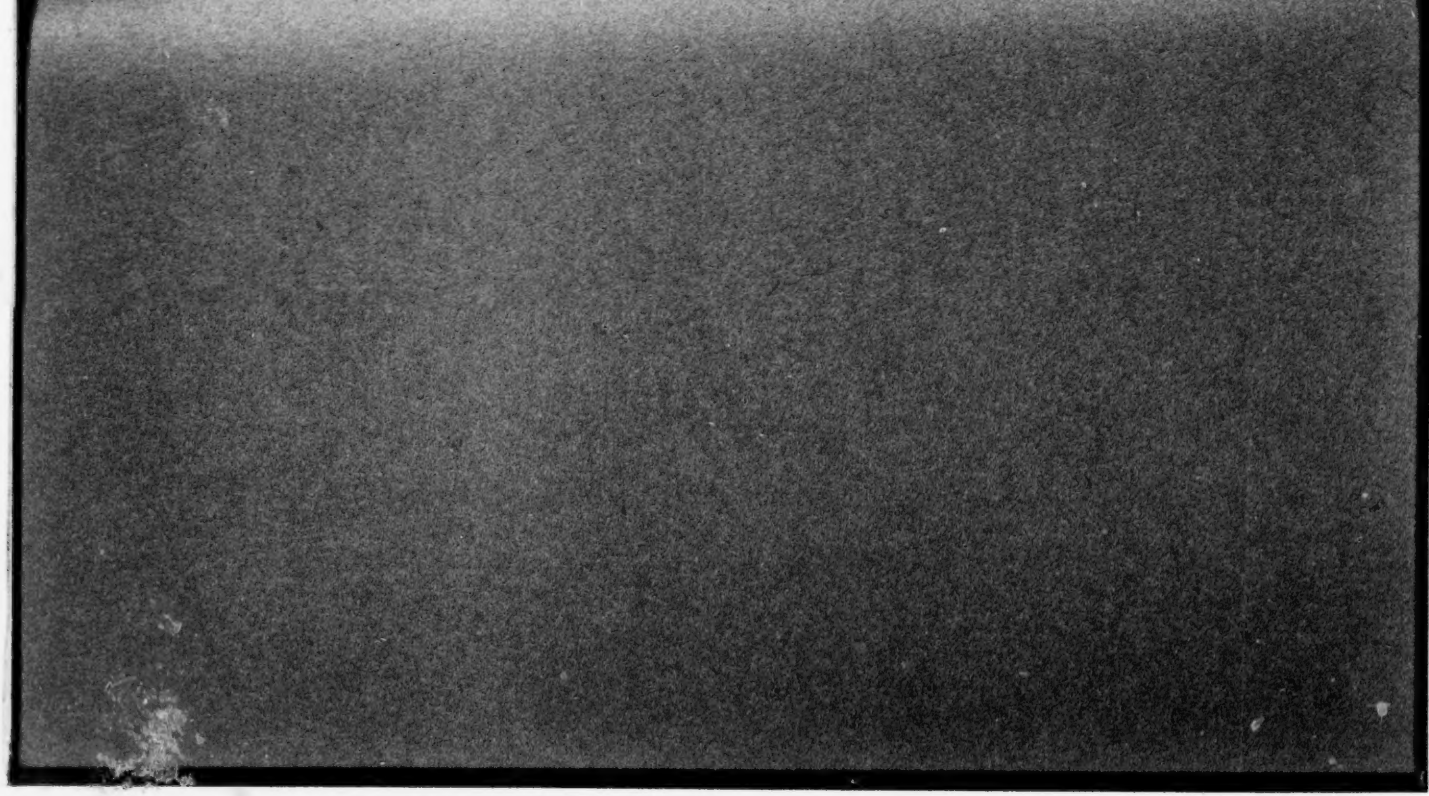
vs.

EDWIN M. KEATLEY.

APPEAL FROM THE COURT OF CLAIMS.

FILED NOVEMBER 2, 1906.

(20447.)



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1 In the United States Court of Claims.

EDWIN M. KEATLEY
v.
THE UNITED STATES. } No. 24725.

I.—PETITION AND EXHIBITS.—*Filed January 29, 1904.*

To the honorable the Chief Justice and Judges of the Court of Claims:

Your petitioner, Edwin M. Keatley, a citizen of the United States residing at Charleston, in the State of West Virginia, respectfully represents:

I.

That from January 1st, 1901, to January 1st, 1904, he was the clerk of the United States Circuit and District Courts for the Southern District of West Virginia, duly appointed, qualified and acting.

II.

That during said period he performed services as such clerk for and in behalf of the United States, and his accounts for fees thus earned were verified by his oath and presented to the court for approval, and the same were approved in the manner required by the act of February 22, 1875, and final action was taken on said accounts by the accounting officers of the Treasury Department and part thereof was allowed and part was disallowed aggregating $170.00, as more specifically set out in Exhibit A.

2 III.

Petitioner is the sole owner of this claim; no assignment or transfer of the claim or any part thereof, or any interest therein has been made; the petitioner is justly entitled to the amount herein claimed from the United States after allowing all just credits and set-offs, and the petitioner believes the facts as stated in this petition to be true.

Wherefore the petitioner prays judgment against the United States in the sum of $170.00.

EDWIN M. KEATLEY,
By F. B. CROSTHWAITE,
His Attorney.

DISTRICT OF COLUMBIA, *ss:*

Before me, Edward F. Colladay, a commissioner of the Court of Claims, personally appeared Frank B. Crosthwaite, who, being duly sworn, says that he is the attorney for the petitioner named in the foregoing petition, and that he has read the same and the facts therein stated are true to the best of his knowledge and belief.

In witness whereof I have hereunto set my hand and official seal this 28th day of January, A. D. 1904.

[OFFICIAL SEAL.]

E. F. COLLADAY,
Comr. Court of Claims.

EXHIBIT A.

The United States to Edwin M. Keatley, Dr.

To services performed as clerk of the U. S. Courts for the Southern District of West Virginia from July 1, 1901, to January 1, 1904, as follows:

Item 1.

A. Report 78594, item 3.

For oaths to U. S. marshals as to correctness of accounts, 18 at 10 cents 1.80

B. Report 82292, item 1.

Oaths and jurats to accounts of office deputy marshal, 2 at 25 cents ..... .50

Item 2.

Report 78594, item 6.

For filing 20 exhibits with bill and one exhibit with report 21 at 10 cents 2.10

Item 3.

A. Report 85736, item 2.

For services performed and rendered in a supplemental account 86.50

B. Report 85736, item 5.

For filing affidavits of poor defendants for process to issue to witnesses 4 to 10¢ ..... .40

Item 4.

A. Report 95379, item 1.

For issuing subpœna, duces tecum in excess of 25 cents, 2 at 75 cents 1.50

B. Report 98091.

Same as item A of item 4, 1 to 75¢ ..... .75

C. Report 95379, item 2.

For issuing more than one subpœna for the same witnesses to testify in several cases, 29 at 25 cents 7.25

Report 98091, ditto, 17 at 25¢ 4.25

Report 98092, ditto, 1 at 25¢ ..... .25

D. For issuing 5 subpœnas and entering return and filing same in excess of one for each witness, 5 at 50 cents 2.50

Item 5.

A. Report 95379, item 3.

For making copies of subpœnas for witnesses whose names appear in other subpœnas, 154 at 20 cents 30.80

Report 98091, ditto, 17 to 25¢ 4.25

Report 98092, ditto, 1 at 25¢ ..... .25

Item 6.

Appeal number 9738. For separate docket fees in separate trials under one indictment 16.00

Total of Exhibit A $170.00

5 II.—TRAVERSE.—*Filed March 12, 1906.*

In the Court of Claims of the United States, December term, A. D. 1905.

EDWIN M. KEATLEY
vs.
THE UNITED STATES. } No. 24725.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

J. A. VAN ORSDEL,
Assistant Attorney-General.

6 III.—COUNTER-CLAIM.—*Filed January 17, 1905.*

Now comes the Attorney-General, by the Assistant Attorney-General, and, further answering the petition in this case, says that said Edwin M. Keatley is indebted to the United States in the sum of fifty-seven dollars and ninety cents ($57.90), for this, that in certain accounts for services heretofore rendered by said Edwin M. Keatley as clerk of the U. S. Circuit and District Courts charges were made for "docketing judgments" as follows:

Fees for docketing judgments.

Allowed by certificate No.	Fiscal year.	Court.	Amount.	
88044	1903	District	$3.00	
90179	1903	do	8.70	
92228	1903	do	.60	
95379	1903	do	7.80	
96733	1904	do	5.25	
100316	1904	do	3.30	
102810	1904	do	7.50	
105477	1905	do	3.75	
				$39.90
80297	1902	Circuit	3.75	
85736	1902	do	6.00	
89043	1903	do	2.85	
98847	1903	do	.15	
92915	1903	do	.45	
95382	1903	do	.75	
100318	1904	do	3.60	
102809	1904	do	.45	
				18.00
				57.90

Said charges were afterwards erroneously and without au-
7 thority of law paid to said claimant, and claimant withholds repayment thereof to the defendant.

Wherefore, the defendant says that it ought to have and recover from said claimant the sum of $57.90 so wrongfully and erroneously charged and paid as aforesaid, and prays judgment against the claimant for the same, or if the claimant shall establish his claim in this case for any sum in excess of said amount, that the same be held as a valid claim or set-off against the amount so established.

(Signed) L. A. PEADT,
Assistant Attorney-General.
PHILIP M. ASHFORD,
Special Attorney.

8 IV.—CLAIMANT'S REPLICATION.—*Filed February 10, 1905.*

Item 1 of Finding III:

Subitems A and B. For administering oaths to United States marshal as to the correctness of his accounts for money disbursed by him.

It is contended that where an officer is required by law to perform certain duties the necessary expenses incurred by him in the performance of such duty are chargeable against the United States, and he should not be required to pay the same. The claimant in this case administered an oath for each account and charged 10 cents each.

The claimant also administered oaths to office deputy marshals as to the correctness of expense accounts and charged 10 cents for each oath.

The same theory which governed the decision in the cases of Elton v. U. S., Number 20982; Jas. P. Luse, 20983; Phillips, 20984; Shelley, 20985, and a number of other similar cases can be applied to this case.

In the cases cited above the claimants were registers and receivers
9 of United States land offices, and as such officers expended money for rent of land offices and presented their accounts to the Interior Department, and the items were disallowed, and the claimants brought suit in this court for said items, and judgment was rendered in their favor against the United States.

Item 2 of finding III:

For filing 21 exhibits at 10 cents each.

Counsel for the defense objects to this item on the theory that the service was unnecessary.

The claimant testifies that the exhibits were filed separately, each being indorsed and formally filed by the clerk, which was in conformity to the practice of the court.

Item 3 of finding III:

The only objection raised by counsel for the defense is that the allowance of the item would give to the claimant an excess of his compensation.

The question involved in this item and for this court to determine, is whether or not fees of this character are allowable and chargeable against the United States. If the court desires to adjust the account, proper data will be furnished showing the exact amount for which judgment should be given.

If the court is not disposed to adjust the account, then judgment should be given for such items as are allowable and let the accounting officers of the Treasury Department pay to this claimant such amount as can be paid under said judgment without going in excess of the maximum compensation allowable by law.

10 Subitem B, of item 3 is a charge for filing affidavits to which no objection is made by counsel for the defendants.

Item 4 of finding III:

Subitems A and B: Charges for issuing 3 subpœna duces tecum.

The claimant charged $1.00 for each of the three writs, on the theory that they are a writ within the meaning of clause 1 of section 828 of the Revised Statutes. The Department allowed 25 cents for each, on the theory that they are simply subpœnas, and this item is for the recovery of 75 cents which was disallowed for each writ.

Subitem C: This charge is for issuing 47 subpœnas at 25 cents.

The Department disallowed the charges for more than one subpœna for the same person to appear and testify in different cases at the same term of court. Separate subpœnas were issued by direction of the court in conformity with the long practice of the District Court of West Virginia. (Claimant's deposition, pages 4 and 5.) These subpœnas were issued by direction of the court and the Supreme Court of the United States (193 U. S., 528) says:

"An order of the court requiring a service to be performed is sufficient authority as between the clerk and the Government for the performance of the service and the allowance of the proper fee therefor."

11 In disposing of this item, the court's attention is respectfully invited to the decision of this court in the case of H. B. Armistead v. The United States, Number 23284.

Subitem D: This is for issuing 5 subpœnas at 25 cents each, and entering return and filing the same at 25 cents each.

The remarks made in the foregoing item will apply to this subitem.

Item 5 of finding III:

Subitem A: For making copies of subpœnas for witnesses.

The copies were furnished in pursuance of an order of court which embodies the requirements of the local statutes that service of all process shall be by delivering a copy thereof to the party to be served. A full copy of the order of court is set out in the claimant's request for findings of fact. (See Jones v. U. S., 193 U. S., 528.)

Item 6 of finding III:

This is a charge for making dockets, indexes, etc., arising in cases where more than one defendant was indicted, and, upon motion, the court granted a severance giving to each defendant a separate trial.

The cases were separately designated on the docket, and separate docket entries were made under each designation. Only one docket fee was allowed for all of the cases.

The case was just as much a separate trial, and the United States is just as properly chargeable with the docket fee in each case
12 as if the defendants had been indicted separately. The charges herein made were allowed by the Auditor, but the Comptroller, upon revision of the account at the suggestion of the Attorney-General, decided in favor of the Government, in order that—

"The question might be determined in court, where the Attorney-General may present his views and have the question properly decided and settled."

Respectfully submitted.

F. B. CROSTHWAITE,
Claimant's Attorney.

13 V.—FINDINGS OF FACT AND CONCLUSION OF LAW.—*Filed May 7, 1906.*

EDWIN M. KEATLEY
v.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

The claimant, Edwin M. Keatley, was clerk of the United States Circuit Court for the Southern District of West Virginia from July 1, 1901, to July 16, 1902, and was clerk of both the Circuit and District Courts for the said district from July 16, 1902, to September 17, 1904.

II.

Claimant's accounts for fees earned during the period from July 1, 1901, to January 1, 1904, duly verified, were presented to and approved by the United States court in the manner prescribed by the act of February 22, 1875. Said accounts were presented to the accounting officers of the Treasury for payment. The items embraced in Finding III were included in said accounts and were disallowed by the accounting officers after explanations of same had been made to them by the claimant.

III.

Item 1. (A) Administering oath to United States marshal as to correctness of his accounts for disbursements, 18 at 10 cents each, $1.80.

(B) Administering oaths to two separate accounts of office deputy marshal, 10 cents each, and attaching jurat thereto, 15 cents each, 50 cents.

Item 2. Filing 21 exhibits in a case at 10 cents each, $2.10.

The exhibits were filed separately, each being indorsed, marked, and formally filed by the clerk.

Item 3. (A) Attendance on court, nine days between August 31, 1901, and January 1, 1902, at $5 each, $45.

(B) Attendance on court, seven days between January 1 and April 1, 1902, at $5 each, $35.

(C) Entering nine orders opening court and nine orders closing court, at 15 cents each (prior to January 1, 1902), $2.70.

(D) Entering seven orders opening court and seven orders closing court, at 15 cents each (January 1 to April 1, 1902), $2.10.

The orders were received by claimant from the judge indorsed "enter," or "enter this order," and signed by the court, whereupon claimant entered the orders, and the court afterwards signed the records for each date. Claimant was paid within $15.15 of his maximum for his services in 1902, so that of items B and D (1902) there is left but said sum of $15.15.

(E) Filing four affidavits for poor defendants for process for witnesses, at 10 cents each, 40 cents.

Item 4. (A and B) Issuing three subpœnas duces tecum, at 75 cents each, $2.25.

Claimant charged $1 for each of the three writs and the Department allowed him 25 cents each.

(C) Issuing forty-seven subpœnas at 25 cents each, $11.75.

The accounting officers disallowed all charges for more than one subpœna for the same person to appear and testify in different cases at the same term of court.

(D) Issuing five subpœnas at 25 cents each, and entering return and filing same at 25 cents each, $2.50.

This is similar to the preceding item.

Item 5. (A) Making copies of subpœnas for witnesses whose names appear in other subpœnas, 231 at 20 cents each, $46.20.

These copies were furnished in pursuance of the following order of court:

"The statutes of West Virginia require that service of all process shall be made by delivering a copy thereof to the party to be served, and it appearing that some confusion has occurred from the practice of the marshal of this district serving subpœnas on witnesses by reading the same to them and failing to give copies thereof to said witnesses, it is here ordered that the clerk of this court do in future furnish the marshal of this district with a copy of each and every subpœna issued by him in criminal cases, to be left with witnesses as is required by the laws of the State of West Virginia, and that his fees therefor be allowed by the court and certified to the proper accounting officer of the Treasury for settlement.

14 Item 6. Separate docket fees for separate trials under one indictment, seven at $1 each where no issue joined and three at $3 each where issue joined and testimony taken—$16.

The above was in cases where an indictment was returned against two or more defendants and motion for severance on behalf of defendants was granted by the court allowing separate trials, and each defendant was separately designated on the criminal docket. The charges were allowed by the Auditor, but, upon revision, were disallowed by the Comptroller in order that the question might be determined in court. A separate jury was called in each case where a trial was had, and the claimant performed the identical services in each case.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant recover judgment of and from the United States in the sum of one hundred and twenty-five dollars and forty-five cents ($125.45) on subitems A and C of item 3; $15.15 of subitems B and D of item 3; subitem E of item 3, and items 5 and 6.

All other items are disallowed.

The defendants' counterclaim is overruled.

BY THE COURT.

VI.—OPINION OF THE COURT.—*Filed May 7, 1906.*

BOOTH, J., delivered the opinion of the court:

This case is now before us on claimant's motion to amend the findings heretofore filed, and defendants' cross motion for a new trial.

As disclosed by the findings of this court, filed February 27, 1905, claim was originally presented on behalf of Edwin M. Keatley, clerk of the United States circuit and district courts for the southern district of West Virginia, for fees earned during the period stated therein. Judgment was awarded the claimant for $79.25. The item contested in this motion by claimant is item 5; that contested by defendants is item 6, and the overruling of their counterclaim.

Item 5 is a charge for making copies of subpœnas for witnesses whose names appear in other subpœnas. The statutes of West Virginia require that service of process shall be made by copy. The Federal court required by order that all its subpœnas should be served by copy as required by said State law, and it was in pursuance of said order that this service was performed. We think the item allowable under the authority of United States *v.* Jones (193 U. S., 528).

The defendants' contention as to item 6 is troublesome. It appears that joint indictments were returned against several defendants; that on motion of defendants' counsel separate trials were granted to some of the defendants, whereupon the clerk made separate docket

entries in accordance with said motion, docketing said causes the same as though separate indictments had been returned against the parties granted separate trials.

Paragraph 10 of section 828 of the Revised Statutes provides:

"For making dockets and indexes, issuing venire, tax costs, and all other services on the trial or argument of a cause where issue is joined and testimony given, three dollars."

By paragraph 11 a fee of $2 is allowed where no testimony is given, and by paragraph 12 a fee of $1 is allowed where the cause is dismissed or discontinued or judgment or decree rendered without issue.

Defendants' contention rests upon the legal signification to be attached to the word "cause," insisting that the trial court, by granting a severance of the one case, did not thereby create several distinct causes, and that the statute embraces an allowance for the one cause only. The terms "case," "suit," and "cause" are used synonymously in statutes and judicial decisions, each term indicating a proceeding in court. The intention of the legislature in employing the term must be ascertained by reference to the context of the whole act. No positive rule affixing their technical meaning under all circumstances can be prescribed. The Congress in the above statute, by enumerating the details of a trial, such as issuing a venire, taxing costs where issue is joined or testimony given, evidently employed the term "cause" as usually used in practice before courts. It is difficult to perceive otherwise.

In the case at bar separate and distinct proceedings were had as to the severance granted the defendants; separate and distinct docket entries must necessarily have been made as to the disposition of the separate proceedings, and for this service, indispensable in its nature, we believe the Congress intended to allow fees.

The defendants' counterclaim, predicated upon the alleged illegal allowance for the docketing of judgments, will have to be dismissed. The services here charged for were admittedly performed by order of the court, and under the Jones case (supra) allowable.

Claimant's motion to amend findings will be allowed. Findings of fact and conclusion of law heretofore filed withdrawn and judgment set aside, and new findings filed as of this date awarding judgment in favor of the claimant for $125.45.

15 VII.—JUDGMENT OF THE COURT.

EDWIN M. KEATLEY
v.
UNITED STATES. } No. 24725.

At the Court of Claims held at the city of Washington, on the 7th day of May, 1906, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, Edwin

M. Keatley, do have and recover of and from the United States the sum of one hundred and twenty-five dollars and forty-five cents ($125.\frac{45}{100}$.)

BY THE COURT.

16 VIII.—APPLICATION FOR, AND ALLOWANCE OF, APPEAL.

In the Court of Claims of the United States, Dec. term, 1905–6.

EDWIN M. KEATLEY
vs.
THE UNITED STATES. } No. 24725.

From the judgment rendered in the above-entitled cause on the 7th day of May, 1906, in favor of claimant, the defendants, by their Attorney-General on the 18th day of June, 1906, make application for, and give notice of, an appeal to the Supreme Court of the United States.

J. A. VAN ORSDEL,
Assistant Attorney-General.

Filed June 18, 1906.

October 22, 1906. Ordered that the foregoing appeal be allowed as prayed for.

BY THE COURT.

17 Court of Claims.

EDWIN M. KEATLEY
vs.
THE UNITED STATES } No. 24725.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law, of the opinion of the court, of the final judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 31st day of October, A. D. 1906.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No. 20447, Court of Claims. Term No. 482. The United States, appellant, vs. Edwin M. Keatley. Filed November 2d, 1906. File No. 20447.

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